

Notice

CC-2007-001

October 13, 2006

Subject: Jurisdiction of Tax Court Over
Collection Due Process Cases

Cancel Date: Upon incorporation
into CCDM

Purpose

This Notice provides guidance on the recent amendment to I.R.C. § 6330(d) providing the Tax Court with exclusive jurisdiction over review of all collection due process determinations issued on or after October 17, 2006, regardless of the type of underlying tax liability. This amendment eliminated district court jurisdiction to review CDP determinations issued after the October 17, 2006 effective date.

Background

The Pension Protection Act of 2006, Pub. L. No. 109-280, § 855(a), 120 Stat. 780, enacted on August 17, 2006, amended Section 6330(d)(1) to read as follows:

- (1) JUDICIAL REVIEW OF DETERMINATION.—The person may, within 30 days of a determination under this section, appeal such determination to the Tax Court (and the Tax Court shall have jurisdiction with respect to such matter).

This amendment applies to determinations made after the date which is 60 days after the date of enactment.

Prior to amendment, section 6330(d)(1)(B) provided for judicial review by a district court of the United States in cases in which "... the Tax Court does not have jurisdiction of the underlying tax liability..." Section 6330(d)(1) (flush language), prior to amendment, further provided that, if a court determines that the appeal was to an incorrect court, the taxpayer will have 30 days to refile the appeal with the correct court.

Pursuant to the amendment, all CDP determinations issued on or after October 17, 2006, may be appealed only to the Tax Court. If an appeal is filed to an incorrect court, taxpayers are no longer entitled to a 30-day period to refile with the Tax Court.

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Procedures for CDP determinations

With respect to determinations made under section 6330(d) by IRS Offices of Appeals prior to October 17, 2006, there will be no change in procedure. Appeals will continue to send Notices of Determination Concerning Collection Action Under Section 6320 and/or 6330, Letters 3193 or 3194, to direct the taxpayer to appeal to the Tax Court, or to a United States District Court, as appropriate.

For all determinations made on or after October 17, 2006, Appeals should only send notice of determination letters providing for appeal to the Tax Court. If a taxpayer files an appeal to a district court from a notice of determination letter dated on or after October 17, 2006, Counsel attorneys should draft a defense letter requesting the Tax Division to file a motion to dismiss the case for lack of jurisdiction.

Pending district court cases

There may be a limited number of cases appealed properly to a district court from a pre-October 17, 2006, determination, in which the district court remands the case to Appeals. After Appeals reconsiders a remanded case, it issues a Supplemental Notice of Determination (Letter 3978). Jurisdiction of the case remains with the district court, even if the Supplemental Notice of Determination (Letter 3978) is issued on or after October 17, 2006. The issuance of the Supplemental Notice is not a new determination and, therefore, does not provide the taxpayer with additional judicial appeal rights. We will advise Appeals to clarify in the Letter 3978 that jurisdiction will be retained by the district court in these cases.

Tax Court litigation issues

The transfer of jurisdiction from the district courts to the Tax Court means that additional substantive tax issues may now be considered by the Tax Court in CDP cases. The primary types of cases previously handled in district court CDP cases were those involving employment taxes, the trust fund recovery penalty, and the frivolous return penalty. These types of cases will now be considered by the Tax Court.

Taxpayers are only entitled to contest the merits of the underlying liability when they did not receive a statutory notice of deficiency with respect to this liability or did not otherwise have an opportunity to dispute this liability. Section 6330(c)(2)(B). An opportunity to dispute a liability includes a prior opportunity for a conference with Appeals offered either before or after assessment of the liability. Treas. Reg. §§ 301.6320-1(e)(3) Q&A-E2, 301.6330-1(e)(3) Q&A-E2.

With respect to the trust fund recovery penalty under section 6672, some district courts have held that the Letter 1153, notice of a proposed trust fund recovery penalty assessment, provides an opportunity to dispute the liability for purposes of section 6330(c)(2)(B), as it provides a taxpayer with the opportunity to go to Appeals to dispute the proposed assessment. See Jackling v. IRS, 352 F. Supp. 2d 129, 132 (D.N.H. 2004); Pelliccio v. United States, 253 F. Supp. 2d 258, 261-62 (D. Conn. 2003). See also Dami v. IRS, 2002-1 USTC ¶ 50,433 (W.D. Pa.); Konkel v. Commissioner, 2001-2 USTC ¶ 50,520 (M.D. Fla. 2000). Receipt of the Letter 1153 by the taxpayer must be established in order to preclude challenge to the trust fund recovery penalty under section 6330(c)(2)(B).

In general, questions about this Notice or CDP issues should be directed to Branch 1, CBS, at (202) 622-3610, including what is required to establish receipt, or argue a presumption of receipt, of the Letter 1153. Other questions about the trust fund recovery penalty should be referred to Branch 3, CBS, at (202) 622-3630. Questions about the frivolous return penalty under section 6702 should be directed to Branch 2, Administrative Provisions and Judicial Practice, at (202) 622-4940. Questions about employment tax liability issues should be discussed with your local TEGE Area Counsel office.

/s/
Deborah A. Butler
Associate Chief Counsel
(Procedure & Administration)